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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/699,780

11/04/2003

Sue Feng

5725.0895-02

5902

22852

7590

09/25/2006

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER
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EXAMINER

VENKAT, JYOTHSNA A

ART UNIT

PAPER NUMBER

1615

DATE MAILED: 09/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/699,780

Applicant(s)

FENG ET AL.

Examiner

JYOTHSNA A. VENKAT Ph. D

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 July 2006.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☒ Claim(s) 96-99, 101, 123, 135, 142, 167, 170, 175, 203 and 206 is/are allowed.
6) ☒ Claim(s) 1-3, 6, 28, 40, 47, 72, 75, 80, 191-202, 204 and 205 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 12/15/05.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Continuation of Disposition of Claims: Claims pending in the application are 1-3,6,28,40,47,72,75,80,96-98,101,123,135,142,167,170,175 and 191-206.

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DETAILED ACTION

Receipt is acknowledged of amendment and IDS file don 7/3/06 and 12/15/05. Claims 1-3, 6, 28, 40, 47, 72, 75, 80, 96-98, 101, 123-, 135, 142, 167, 170, 175 and 191-206 are pending in the application and the status of the application is as follows:

The following new grounds of rejections are necessitated by the amendment.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-3, 6, 28, 40, 47, 72, 75, 80, 191, 193, and 195-202 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. This is new matter rejection.

There is no support in the specification for the expression drawn to:

Claim 1 (currently amended): A method for increasing the intensity of color in a composition chosen from one or more of a mascara, an eyeliner, a foundation, a lipstick, a blusher, a make-up removing product, a make-up product for the body, an eye shadow, a face powder, a concealer, a shampoo, a conditioner, an anti-sun product, a care product for skin, a care product for lips, and a care product for hair comprising including in said composition: (i) at least one coloring agent, and (ii) at least one heteropolymer comprising a polymer skeleton which comprises at least one hydrocarbon-based repeating unit comprising at least one hetero

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atom, wherein said at least one heteropolymer is included in said composition in an amount effective to increase the intensity of color in said cosmetic composition.

The same is true for claim 28 and claim 195.

Applicants in the response dated 12/15/05 point out to paragraphs 0005, 0067 and example at paragraphs 00126-00127. There is no support for increasing the intensity of the color at paragraph 0005. Paragraph 0067 discusses that as the dispersion of the coloring agent increases so does the intensity of the visible color. The discussion at paragraph 0067 is with respect to intensity of the color based upon the L value discussed in patent 6,010, 541 ('541) especially col.9, where in lower the L value greater the intensity of the color. In patent '541 the difference between the invention and the prior art was 3.53, where as in the instant application the difference in L value between the instant application and prior art is 1.60. This is not a significant value. Additionally Example at paragraphs 126-129 is drawn to specific ingredients where as none of the claims are specific to the ingredients tested in the example. Based upon all the facts, recitation of "increasing the intensity of the color" is new matter.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 192, 194 and 204-205 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Scope of claims 192 and 194 are same as claims 204-205. Clarification is requested.

Allowable Subject Matter

Claims 96-99, 101, 123, 135, 142, 167, 170, 175, 203 and 206 are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

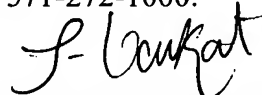
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTHSNA A. VENKAT Ph. D whose telephone number is 571-272-0607. The examiner can normally be reached on Monday-Friday, 10:30-7:30:1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


JYOTHSNA A VENKAT Ph. D
Primary Examiner
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